

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 21161
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

This case arises from a timely protest of a State Tax Commission staff (staff) decision adjusting the property tax reduction benefit for 2007. An informal conference was requested by [Redacted] (petitioner) and held on July 24, 2008. This matter was submitted for decision based on the documents in the file. The State Tax Commission has reviewed the file and makes its decision thereon.

[Redacted]petitioner filed an application for the 2007 property tax reduction benefit on January 8, 2007. The application was approved, and the petitioner received a benefit for payment of the property tax on the homestead.

Idaho Code §§ 63-707 and 63-708 provide for audit of all claims and recovery of benefits that have been paid in error. When the staff compared the petitioner's application with [Redacted] County records, ownership of the property was questioned, and a copy of the deed was requested.

Idaho Code § 63-701 describes the conditions that must exist for an applicant to qualify to receive a property tax reduction benefit. The pertinent part of Idaho Code § 63-701 states:

63-701. Definitions. As used in this chapter:

(1) **"Claimant" means a person who has filed an application** under section 63-602G, Idaho Code, and has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1, or before April 15, of the year in which the claimant first filed a claim on the homestead in question, **a claimant must be an owner**

of the homestead and on January 1 of said year a claimant must be:

- (a) Not less than sixty-five (65) years old; or
- (b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or
- (c) A widow or widower; or
- (d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or
- (e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States department of veterans affairs; or
- (f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or
- (g) Blind.

(2) **"Homestead" means the dwelling, owner-occupied by the claimant** as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. "Homestead" does not include personal property such as furniture, furnishings or appliances, but a manufactured home may be a homestead. (Emphasis added.)

...

(7) **"Owner" means a person holding title in fee simple** or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. (Emphasis added.)

The property tax reduction benefit program is a benefit for certain individuals based on their qualifications as outlined in Idaho law. One of the specific requirements for consideration to receive the benefit is to own a homestead on January 1, or before April 15, of the year in

which the claim was filed. The owner of a property is then described in detail to clarify who will be considered owner for property tax reduction benefit purposes.

On October 20, 2006, a quitclaim deed was filed by [Redacted] taking ownership of the property out of his name and making [Redacted] the sole owner of the property.

On May 12, 2008, a Notice of Deficiency Determination (NODD) was issued, and the petitioner was asked to repay the benefits received plus interest.

In response to the NODD, the staff received a letter from the petitioner and her husband, stating that they did not realize that the deed to the property was in [Redacted] name only. They went on to say that this error has been corrected and both names are now on the deed.

63-708. RECOVERY OF ERRONEOUS CLAIMS. Within three (3) years of payment, the state tax commission may recover any erroneous or incorrect payment made under sections 63-701 through 63-710, Idaho Code, from any "claimant" as defined in section 63-701(1), Idaho Code. The deficiency determination, collection, and enforcement procedures provided by the Idaho income tax act, sections 63-3039, 63-3042, 63-3043 through 63-3064, Idaho Code, shall apply and be available to the commission for enforcement and collection under sections 63-701 through 63-710, Idaho Code, and such sections shall, for this purpose, be considered part of sections 63-701 through 63-710, Idaho Code. Wherever liens or any other proceedings are defined as income tax liens or proceedings, they shall, when applied in enforcement or collection under sections 63-701 through 63-710, Idaho Code, be described as tax relief liens and proceedings. In connection with such sections, a deficiency shall consist of any amount erroneously claimed by or paid to a claimant under sections 63-701 through 63-710, Idaho Code.

Idaho Code § 63-701 uses definitions to describe eligibility and income requirements for an applicant to qualify for the property tax reduction benefit. These definitions are not the same definitions used in other sections of the Idaho Code or even in the common dictionary.

However, the definitions are very specific. The law must be followed as written. If the law is socially or economically unsound, the power to correct it is legislative, not within the

powers of the Tax Commission, John Hancock Mutual Life Insurance Co. v. Neill, 79 Idaho 385, 319 P.2d 195 (1957).

As of October 20, 2006, [Redacted] became the sole owner of the property. She did not meet the eligibility requirements by definition for 2007. Therefore, the repayment of the petitioner's 2007 property tax reduction benefit is appropriate.

WHEREFORE, the Notice of Deficiency Determination letter dated May 12, 2008, is hereby APPROVED, AFFIRMED, and MADE FINAL.

It is ordered and this does order that the petitioner pay the following 2007 property tax reduction benefit reimbursement and interest.

<u>YEAR</u>	<u>BENEFIT</u>	<u>INTEREST</u>	<u>TOTAL</u>
2007	\$1,320	\$24.94	\$1,344.94

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed.

DATED this _____ day of _____, 2008.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2008, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.